



HIPAA PRIVACY REGULATIONS EXTRACT OF PREEMPTION REFERENCES

(67 Fed.Reg. 14776 *et seq.* (Mar. 27, 2002))

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EXPLANATION

The following document is a tool designed to assist HIPAA-covered persons and entities in analyzing provisions of State law for preemption by the Health Insurance Portability and Accountability Act (HIPAA). The document is an extract of all references to HIPAA preemption of State law set forth in the modifications to the Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule) proposed on March 27, 2002. (67 Fed.Reg. 14776 et seq. (Mar. 27, 2002).)

Please forward any comments, corrections, etc. to the attention of:

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HIPAA Privacy Regulations
Extract of Preemption References
(67 Fed.Reg. 14776 et seq. (Mar. 27, 2002))

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The Department also proposes conforming changes to the definition of “more stringent” in § 160.202...to reflect that consent is no longer required. [14781 Federal Register / Vol. 67, No. 59 / Wednesday, March 27, 2002 / Rules and Regulations]

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F. Parents as Personal Representatives of Unemancipated Minors [fn1: Throughout this section of the preamble, “minor” refers to an unemancipated minor and “parent” refers to a parent, guardian, or other person acting in loco parentis.]

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The Privacy Rule also states that disclosure of health information about a minor to a parent is permitted if State law authorizes or requires disclosure to a parent, thereby allowing such disclosure where State law determines it is appropriate. See § 160.202, definition of “more stringent.” [14791 Federal Register / Vol. 67, No. 59 / Wednesday, March 27, 2002 / Rules and Regulations]

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Proposed Modifications

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First, in order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the Department proposes to move the relevant language about the disclosure of health information from the definition of “more stringent” (see § 160.202) to the standards regarding parents and minors (see § 164.502(g)(3)). This change would make it clear that State and other applicable law governs not only when a State explicitly addresses disclosure of protected health information to a parent but also when such law provides discretion to a provider. [14792 Federal Register / Vol. 67, No. 59 / Wednesday, March 27, 2002 / Rules and Regulations]

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§ 160.202 Definitions.

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More stringent means * * *

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

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(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

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[14811 Federal Register / Vol. 67, No. 59 / Wednesday, March 27, 2002 / Rules and Regulations]

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